

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RHOBAR, INC., RHOBAR DEVELOPMENT
ASSOCIATES, LLC., ACKERLY ASSOCIATES,
LLC., SILVER HUNTINGTON ENTERPRISES,
LLC., and SILVER HUNTINGTON REALTY, LLC.,

**AMENDED REPLY AND
ANSWER TO THE AMENDED
ANSWER WITH
COUNTERCLAIMS**

Plaintiffs,

-against-

Case No.: 07 CIV 6100

HOWARD SILVER, 2 ON THE AISLE, INC.,
DAVID A. KAMINSKY & ASSOCIATES, P.C.,
MARTIN G. DOBIN, ESQ., a/k/a JERRY DOBIN,
ESQ., and ELLIOT J. HURDY,

Defendants.

DAVID A. KAMINSKY & ASSOCIATES, P.C.,
MARTIN G. DOBIN, ESQ. a/k/a JERRY DOBIN,
ESQ. and HOWARD SILVER,

Counterclaimants,

-against-

RHOBAR, INC., RHOBAR DEVELOPMENT
ASSOCIATES, LLC., ACKERLY ASSOCIATES,
LLC., SILVER HUNTINGTON ENTERPRISES,
LLC., and SILVER HUNTINGTON REALTY, LLC.,

Counterdefendants.

PEOPLE:

PLEASE TAKE NOTICE that said Plaintiffs and "Counterdefendants", by their attorneys, McDonough & Artz, P.C., hereby interpose the following amended reply to and in answer to the counterclaims and claims of Defendants' and Counterclaimants' Answer:

COUNTERCLAIMS

1. Deny the allegations of paragraph (138) which repeats and realleges the allegations of the Amended Answer and Counterclaims except where said allegations admit the allegations of the Complaint.

2. Deny the allegations of paragraph (139) of the Amended Answer with Counterclaims.

3. Deny the allegations of paragraph (140) of the Amended Answer with Counterclaims.

4. Deny the allegations of paragraph (141) of the Amended Answer with Counterclaims.

5. Deny the allegations of paragraph (142) of the Amended Answer with Counterclaims.

6. Deny the allegations of paragraph (143) of the Amended Answer with Counterclaims.

7. Deny the allegations of paragraph (144) of the Amended Answer with Counterclaims.

8. Deny the allegations of paragraph (145) of the Amended Answer with Counterclaims.

9. Deny the allegations of paragraph (146) which repeats and realleges the allegations of the Amended Answer and Counterclaims except where said allegations admit the allegations of the Complaint.

10. Deny the allegations of paragraph (147) of the Amended Answer with Counterclaims.

11. Deny the allegations of paragraph (148) of the Amended Answer with Counterclaims.

12. Deny the allegations of paragraph (149) which repeats and realleges the allegations of the Amended Answer and Counterclaims except where said allegations admit the allegations of the Complaint.

13. Deny the allegations of paragraph (150) of the Amended Answer with Counterclaims.

14. Deny the allegations of paragraph (151) of the Amended Answer with Counterclaims.

15. Deny the allegations of paragraph (152) of the Amended Answer with Counterclaims.

16. Deny the allegations of paragraph (153) which repeats and realleges the allegations of the Amended Answer and Counterclaims except where said allegations admit the allegations of the Complaint.

17. Deny the allegations of paragraph (154) of the Amended Answer with Counterclaims.

18. Deny the allegations of paragraph (155) of the Amended Answer with Counterclaims.

19. Deny the allegations of paragraph (156) of the Amended Answer with Counterclaims.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE TO ALL COUNTERCLAIMS

20. Plaintiffs and "Counterdefendants" repeat and reallege the allegations of paragraphs (1) through paragraph (97) of the Complaint as if fully set forth herein.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE TO ALL COUNTERCLAIMS

21. The Counterclaims fail to state a cause of action.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE TO ALL COUNTERCLAIMS

22. The Counterclaims and Claims alleged in the Answer fail to set forth claims upon which relief may be granted.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE TO ALL COUNTERCLAIMS

23. The Counterclaims and claims in the Answer are barred by the doctrine of unclean hands.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE TO ALL COUNTERCLAIMS

24. The Counterclaims are barred by Defendants waiver, through their acts, failures to act and conduct.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE TO ALL COUNTERCLAIMS

25. Defendants are estopped and barred from making the Counterclaims by their acts, failures to act and conduct.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE TO ALL COUNTERCLAIMS

26. Defendants have failed in their duty to mitigate damages and, in fact, Defendants have increased any alleged damages by their acts and omissions.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE TO ALL COUNTERCLAIMS

27. That whatever damages Defendants claim to have sustained, if any, were caused or contributed to by the culpable conduct of the Defendants, including, want of care, negligence and knowing assumption of risk.

28. If the Defendants are entitled to recover any damages, and such recovery is denied, such recovery must be diminished to the extent and to the degree that the above set forth culpable conduct bears on the total conduct causing the alleged damages.

WHEREFORE, the Plaintiffs and "Counterdefendants" demand judgment dismissing the counterclaims and for the relief set forth in Plaintiffs' Complaint, together with costs and disbursements of this action, legal fees, and such other and further relief as this Court deems just and proper.

Dated: December 14, 2007
Binghamton, NY


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